



## **LIBRARY OF CONGRESS**

### **U.S. Copyright Office**

**[Docket No. 2016-2]**

### **Information Technology Upgrades for a Twenty-First Century Copyright Office**

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of inquiry.

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**SUMMARY:** The U.S. Copyright Office has prepared a Provisional Information Technology Modernization Plan (“IT Plan”) at the direction of Congress that details necessary IT upgrades to transform the Office to better meet the needs of the current and future copyright system. As further directed by Congress, the Register is seeking public comments to help inform the Office on the funding strategy and implementation timeline for the IT Plan.

**DATES:** Written comments must be received no later than March 31, 2016 at 11:59 p.m. Eastern Time.

**ADDRESSES:** The Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office website at <http://copyright.gov/policy/itupgrade/index.html>. If electronic submission of comments is not feasible, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Catherine Rowland, Senior Advisor to the Register of Copyrights, or Regan A. Smith, Associate General Counsel, by email at [itcomments@loc.gov](mailto:itcomments@loc.gov), or by telephone at (202) 707-8350.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Technology is the cornerstone of a modern copyright system, and the need to modernize the Office’s technological infrastructure has been well documented. The Office has engaged in four years of deliberative assessment and public review to establish the framework for a modernized IT system to more efficiently serve the needs of authors, users of copyrighted works, and the general public.<sup>1</sup> Congress also has taken note; for example, during the copyright review process, the House Judiciary Committee expressed concern that the Office’s technology needed to be upgraded to respond to the needs of copyright owners and users,<sup>2</sup> and the House Committee on Administration recently conducted a hearing entitled “Improving Customer Service for the Copyright

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<sup>1</sup> See, e.g., REGISTER OF COPYRIGHTS, PRIORITIES AND SPECIAL PROJECTS OF THE UNITED STATES COPYRIGHT OFFICE 13 (2011); Technical Upgrades to Registration and Recordation Functions in Docket No. 2013-2, 78 FR 17722 (Mar. 22, 2013); *Oversight of the U.S. Copyright Office: Hearing Before the H. Subcomm. on Judiciary*, 114th Cong. 3 (statement of Maria A. Pallante, Register of Copyrights and Director of the United States Copyright Office) (describing suggestions regarding IT modernization received from the public in connection with its technical upgrades study); ROBERT BRAUNEIS, ABRAHAM L. KAMINSTEIN SCHOLAR IN RESIDENCE, U.S. COPYRIGHT OFFICE, TRANSFORMING DOCUMENT RECORDATION AT THE UNITED STATES COPYRIGHT OFFICE, (2015), available at <http://www.copyright.gov/docs/recordation/>; OFFICE OF THE CHIEF INFORMATION OFFICER, REPORT AND RECOMMENDATIONS OF THE TECHNICAL UPGRADES SPECIAL PROJECT TEAM (2015) (“Technical Upgrades Report”).

<sup>2</sup> See, e.g., *U.S. Copyright Office: Its Functions and Resources, Hearing Before the H. Comm. on the Judiciary*, 114th Cong. at 2 (2015) (statement of Chairman Goodlatte) (“Burdened by a lack of funds and dependent upon the vastly different technology needs of the Library of Congress, the Copyright Office has been unable to respond to the needs of the copyright community, harming copyright owners and users alike.”); *id.* at 3 (statement of Ranking Member Conyers) (“[T]he Office’s recordation system continues to be a cumbersome and costly process that requires manual examination and data entry. In addition, the functionality of the Office’s databases and the usability of the Office’s website must be improved. Further, the security of deposited digital works must be strengthened, and the copyright community needs a system which provides a more usable and searchable public record of copyrighted material . . . . The Copyright Office is aware of the need to modernize so that it can adapt to ever-evolving technology and the needs of the copyright community.”).

Community.”<sup>3</sup> The copyright community also has weighed in, stressing the importance of technology to the national copyright system and noting that the Office currently does not have what it needs to run the copyright system sufficiently.<sup>4</sup> The Office’s December 1, 2015 Strategic Plan for Fiscal Years 2016-2020 (“Strategic Plan,” available at <http://copyright.gov/reports/strategic-plan/USCO-strategic.pdf>)<sup>5</sup> provides a vision of overall Office modernization, including the necessary integration of legal, business, and technical components.

Accordingly, in its report accompanying the Consolidated Appropriations Act of 2015, the House Committee on Appropriations noted:

The Committee fully understands the importance of the Copyright Office as it relates to creativity and commercial artistic activity not only within the United States but also on a world-wide basis. In order to serve the copyright owners and the copyright community in the 21st century, a robust modern information technology (IT) operation will be necessary. The \$1.5 million provided in fiscal year 2015 began the effort to determine the requirements for a modern IT environment. With the planning underway, the Committee directs the Register of Copyrights to report, to the Committee on Appropriation and relevant Authorizing Committees of the House on a detailed plan on necessary IT upgrades, with a cost estimate, that are required for a 21st century copyright organization.<sup>6</sup>

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<sup>3</sup> *Improving Customer Service for the Copyright Community: Ensuring the Copyright Office and the Library of Congress Are Able to Meet the Demands of the Digital Age: Hearing Before the H. Comm. on Administration*, 114th Cong. (2015).

<sup>4</sup> *See, e.g., U.S. Copyright Office: Its Functions and Resources* at 24 (statement of Lisa A. Dunner, Partner, Dunner Law PLLC, on behalf of the Section of Intell. Prop. L. of the Am. Bar Ass’n) (“The Copyright Office needs a sophisticated, efficient IT system responsive to its needs and those of its users.”); *id.* at 43 (statement of Nancy J. Mertz, Schoeman Updike Kaufman & Stern LLP, on behalf of the Am. Intell. Prop. L. Ass’n) (“As the [Copyright Office’s] technical upgrades report explains, ‘[t]he Office’s technology infrastructure impacts all of the Office’s key services and is the single greatest factor in its ability to administer copyright registration, recordation services, and statutory licenses effectively.’ Yet, the Copyright Office does not control its technology. Rather, it is controlled by the Library of Congress, and housed on the Library’s servers. In fact, even equipment purchased by the Copyright Office with its appropriated funds, is controlled by the Library. Additionally, the Office is dependent upon the Library’s IT staff. However, the Library IT staff has other responsibilities, and is not well-versed in the needs of the copyright community. AIPLA urges this Committee to explore ways to give the Copyright Office greater autonomy over its IT infrastructure and services.” (citations omitted)).

<sup>5</sup> REGISTER OF COPYRIGHTS, POSITIONING THE UNITED STATES COPYRIGHT OFFICE FOR THE FUTURE, 18 (December 1, 2015).

<sup>7</sup> H. Rep. 114-110, 114th Cong. (2015).

Additionally, the House Committee on Appropriations directed the Office to seek public comment regarding a funding strategy and an implementation timeline for the IT Plan.<sup>7</sup> After significant review and analysis, the Office has delivered a provisional IT Plan (available at [www.copyright.gov/reports/itplan](http://www.copyright.gov/reports/itplan)), and now seeks public input concerning these issues. While this Federal Register Notice is not a substitute for the details set forth in the IT Plan, a brief summary of the plan is provided below. The IT Plan is flexible in that it may be implemented according to a variety of governance protocols, approvals, and controls between the Copyright Office and larger Library of Congress; it does, however, depart from the status quo in which the Copyright Office manages software applications and the Library of Congress manages underlying IT systems.

#### **A. Modernizing the Copyright Office's Information Technology**

The IT Plan is a companion to the Strategic Plan, which envisions modernization of the Office as a comprehensive undertaking that addresses: the national copyright system's IT, data, and infrastructure needs; business, regulatory and legal issues under the Office's care; and related potential changes to the copyright laws of the United States.<sup>8</sup> The major changes necessary to effectively examine, register, protect, document, and license copyright interests and make useful information available in the digital age cannot be accomplished in the current technology state.

The IT Plan heeds the Strategic Plan's underlying call for the Copyright Office of the twenty-first century to be lean, nimble, results-driven, and future-focused, and

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<sup>7</sup> H. Rep. 114-110, 114th Cong. (2015).

<sup>8</sup> REGISTER OF COPYRIGHTS, POSITIONING THE UNITED STATES COPYRIGHT OFFICE FOR THE FUTURE, 18 (December 1, 2015).

translates those themes into a comprehensive and exhaustive technology modernization plan. The IT Plan would establish an IT system that meets the current and future needs of a modern copyright agency by minimizing costly infrastructure needs, embracing cloud services, and utilizing mobile technologies. It prioritizes data integrity and security controls, and decreases risk by spreading projects among multiple partners or vendors. Under the plan, the Office would phase out legacy systems and assume a clean-slate, carefully targeted strategy in moving forward. The IT Plan assumes that modernization must be managed from within the Copyright Office, relying upon individuals who work alongside of, and are fully accountable to, the Office's legal and operational experts.

Together, the Strategic Plan and the IT Plan provide for a modernization approach that will transform copyright administration in the United States. Customers will be able to transact with the Office easily, quickly, and from anywhere at any time, using any number of consumer platforms to secure copyrights and access data, including licensing or public domain information. Systems will be designed to yield quick, authoritative results, encouraging participation, partnerships, and commerce. Such a modern Office will offer a rich public record that is easily accessible by all, providing enormous benefit to copyright authors and owners, consumers, services, users, and anyone else with an interest in the national copyright system.

The implementation of a modern IT system will require careful planning and coordination during the transition period, as required under applicable federal practices. The IT Plan makes a core assumption that modernization requires, and will receive, singular attention and focus. Assuming this dedicated, full-time commitment to modernization, the IT Plan proposes a five-year implementation timeline that projects

that users will experience meaningful differences in services within three years. The five-year timeline is divided into four sequential phases, during which new initiatives will be implemented while the Office maintains continuity of services. These phases may overlap as appropriate for mission-critical services; for example, a modernized recordation system could be completed in advance of an integrated system of records program. Generally speaking, the four phases include:

- Phase 0: The initial phase is dedicated to establishing the IT operating model, processes, and planning necessary for success in the future phases. This includes establishing a project management office and adopting a transition plan to facilitate migration to a cloud-based system, while retaining necessary support from current vendors. Core IT governance and procedures will be adopted during this phase, and market analysis of potential vendors completed.
- Phase 1: The Office would assume interim control of existing IT systems and coordinate support for legacy systems. Phase 1 also would: build core infrastructure and stand up the key back-office and desktop capabilities necessary to run IT operations; migrate the national recordation system to its target electronic platform; and continue design on solutions for additional core applications and services.
- Phase 2: This phase includes full deployment of the remaining core mission Office applications. The existing registration system will be replaced in a way that improves user experience and includes a highly secure, certified digital repository, with appropriately serious attention to protecting electronically transmitted deposits. Existing copyright data would be migrated to a cloud-based

system of records, linking registration with recordation data. Effective data management would facilitate efficient updating of records, promoting data accuracy. The Office would have the capability of directly interacting with outside organizations to share relevant data through APIs, thus facilitating business investment and entrepreneurship. By the end of Phase 2, the Office would have full control over its IT management, and some legacy support agreements could be phased out.

- Phase 3: In Phase 3, the Office would be fully transitioned to its new environment. Focus will turn toward enhancing core Office services with continuous improvement. The CIO will identify future desired technology investments to increase service capabilities.

At the conclusion of the four phases, the Office IT will operate within a steady state environment. Operations and maintenance will continue, with performance of existing services assessed relative to identified benchmarks. At the same time, the Office would continue to engage with stakeholders to identify potential new capabilities and services.

Within this phased framework, there are a variety of ways to proceed with development. The Office is interested in maximizing flexible opportunities for outside entities to efficiently aid the effort. The Office would expect to leverage the experience of expert contractors for short-term projects, consider traditional contracting, consider no-cost contracting, and review other alternatives as well.

## **B. Funding a Modern Information Technology System**

Creating a more flexible and robust IT system will require the Office to fund both

capital and operating expenses, not only during the five-year IT Plan, but on an ongoing basis.

Currently, the Office has two main funding sources: (1) fees paid by individual authors, corporate entities, and other customers; and (2) annual appropriated dollars reflecting the value of the Office's mission to entrepreneurs, the public, and the economy. Historically, fees have made up the lion's share of the Office's basic budget, ranging from 59% to 67% in the past five years. Congress decides, in the course of the federal budget authorization, how much income the Office may use to cover its costs. Thus, the Office may spend incoming fees, but only up to the amount authorized by Congress. Tax dollars comprise a smaller, but critical, part of the Office's budget and reflect the value of the Office's services to the general public—for example, by providing the public with a searchable database of copyright registration and ownership information. The Office also has a small reserve account, which includes any fees that exceeded the Office's annual spending limit, de-obligated prior year funds, and other fees authorized for expenditure but not spent. The reserve fund, however, is not a revolving fund account and is subject to congressional review every year. The Office is considering changes to the structure overall, including the option to migrate costs previously categorized as capital expenses to operating expenses in order to fund infrastructure improvements, as reflected in the IT Plan.

Since 1997, the Office has conducted studies every several years to assess and set appropriate fees for its services. The analysis is governed by section 708 of the Copyright Act, which specifies various services for which the Office may charge fees and provides that the Register may adjust these fees to “not more than necessary to cover the



reasonable costs incurred by the Copyright Office for . . . [such services], plus a reasonable inflation adjustment to account for any estimated increase in costs.”<sup>9</sup>

Additionally, fees for core services must be “fair and equitable and give due consideration to the objectives of the copyright system.” These objectives include the value of copyright registration and recordation, and registration must remain relatively affordable to encourage applications, which are voluntary. The Office most recently adjusted its fees in 2014, when it issued a revised fee schedule that increased some fees, reduced others, and introduced a reduced fee for individual authors of single works.

The Office fee-setting is an iterative regulatory process. In assessing its fees, the Office need not assume “one size fits all”; indeed, the more flexible the IT of the Office, the more likely the Office can institute practices and regulations that meet the targeted needs of applicants, *e.g.*, software developers or photographers or digital filmmakers.

## **II. Subjects of Inquiry**

To assess both how to implement and fund a modern copyright IT system, the Office is interested in public comment on the following subjects:

1. Please comment on the proposed five-year timeline for IT modernization based on the phases set forth in detail in the IT Plan, which incorporate best practices of the federal government.
2. Should the modernization be funded from fees, appropriated dollars, or a combination of both, and, if both, is there an ideal formula or ratio?
3. What authorities or flexibilities, if any, should be included in 17 U.S.C. 708 regarding whether and how the Office may recover its reasonable costs of

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<sup>9</sup> 17 U.S.C. 708(b)(2).

operation (including in the aggregate as opposed to based upon individual services), differentiate between customers or users, and/or fund future investments, not only as to the five-year plan but on an ongoing basis?

4. Should the Copyright Office fund capital and operating expenses differently? If so, how?
5. Please identify anything else that the Copyright Office should consider in relation to the funding strategy, benefits, or implementation of IT modernization.

**Dated:** February 25, 2016.

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**Maria A. Pallante**  
*Register of Copyrights*  
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